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6 **IN THE UNITED STATES DISTRICT COURT**  
7 **FOR THE DISTRICT OF ARIZONA**  
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9 Leandra Pierce,

10 Plaintiff,

11 v.

12 New Hampshire Department of Children  
13 Youth and Families, et al.,

14 Defendants.

No. CV-23-00646-PHX-DJH

**ORDER**

15 *Pro se* Plaintiff Leandra Pierce (“Plaintiff”) has filed a First Amended Complaint  
16 (“FAC”) (Doc. 6). The Court’s prior Order granted Plaintiff’s Application to proceed *in*  
17 *forma pauperis* (“IFP”) but dismissed her Original Complaint (Doc. 1) for failing to state  
18 any claim upon which relief may be granted. (Doc. 5). Nonetheless, the Court granted  
19 Plaintiff leave to file an amended complaint. (*Id.*) Plaintiff has since done so, and the  
20 Court will now screen the FAC under 28 U.S.C. § 1915(e)(2).

21 **I. Legal Standard**

22 The determination that Plaintiff may proceed IFP does not end the inquiry under  
23 28 U.S.C. § 1915. When a party has been granted IFP status, the Court must review the  
24 complaint to determine whether the action:

- 25 (i) is frivolous or malicious;  
26 (ii) fails to state a claim on which relief may be granted; or  
27 (iii) seeks monetary relief against a defendant who is immune from such relief.  
28

1 See 28 U.S.C. § 1915(e)(2)(B).<sup>1</sup> In conducting this review, “section 1915(e) not only  
 2 permits but requires a district court to dismiss an [IFP] complaint that fails to state a claim.”  
 3 *Lopez v. Smith*, 203 F.3d 1122, 1127 (9th Cir. 2000) (citation omitted). Rule 8(a) of the  
 4 Federal Rules of Civil Procedure requires that:

5 A pleading which sets forth a claim for relief, whether an original claim,  
 6 counter-claim, cross-claim, or third-party claim, shall contain (1) a short and  
 7 plain statement of the grounds upon which the court’s jurisdiction depends,  
 8 unless the court already has jurisdiction and the claim needs no new grounds  
 9 of jurisdiction to support it, (2) a short and plain statement of the claim  
 10 showing that the pleader is entitled to relief, and (3) a demand for judgment  
 for the relief the pleader seeks. Relief in the alternative or of several different  
 types may be demanded.

11 Fed. R. Civ. P. 8(a). While Rule 8 does not demand detailed factual allegations, “it  
 12 demands more than an unadorned, the defendant-unlawfully-harmed-me accusation.”  
 13 *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009).<sup>2</sup> “Threadbare recitals of the elements of a  
 14 cause of action, supported by mere conclusory statements, do not suffice.” *Id.* A complaint  
 15 “must contain sufficient factual matter, accepted as true, to state a claim to relief that is  
 16 plausible on its face.” *Id.* (quoting *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 570  
 17 (2007)). A claim is plausible “when the plaintiff pleads factual content that allows the  
 18 court to draw the reasonable inference that the defendant is liable for the misconduct  
 19 alleged.” *Id.* (citing *Twombly*, 550 U.S. at 556). A complaint that provides “labels and  
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21 <sup>1</sup> “While much of § 1915 outlines how prisoners can file proceedings *in forma pauperis*,  
 22 §1915(e) applies to all *in forma pauperis* proceedings, not just those filed by prisoners.”  
 23 *Long v. Maricopa Cmty. College Dist.*, 2012 WL 588965, at \*1 (D. Ariz. Feb. 22, 2012)  
 24 (citing *Lopez v. Smith*, 203 F.3d 1122, 1126 n. 7 (9th Cir. 2000) (“[S]ection 1915(e) applies  
 25 to all *in forma pauperis* complaints[.]”)); see also *Calhoun v. Stahl*, 254 F.3d 845 (9th Cir.  
 2001) (“[T]he provisions of 28 U.S.C. § 1915(e)(2)(B) are not limited to prisoners.”)  
 (citation omitted). Therefore, section 1915 applies to this non-prisoner IFP complaint.

26 <sup>2</sup> “Although the *Iqbal* Court was addressing pleading standards in the context of a Rule  
 27 12(b)(6) motion, the Court finds that those standards also apply in the initial screening of  
 28 a complaint pursuant to 28 U.S.C. §§ 1915(e)(2) and 1915A since *Iqbal* discusses the  
 general pleading standards of Rule 8, which apply in all civil actions.” *McLemore v.*  
*Dennis Dillon Automotive Group, Inc.*, 2013 WL 97767, at \*2 n. 1 (D. Idaho Jan. 8, 2013).

1 conclusions” or “a formulaic recitation of the elements of a cause of action will not do.”  
 2 *Twombly*, 550 U.S. at 555. Nor will a complaint suffice if it presents nothing more than  
 3 “naked assertions” without “further factual enhancement.” *Id.* at 557.

4 The Court must accept all well-pleaded factual allegations as true and interpret the  
 5 facts in the light most favorable to the plaintiff. *Shwarz v. United States*, 234 F.3d 428,  
 6 435 (9th Cir. 2000). That rule does not apply, however, to legal conclusions. *Iqbal*, 556  
 7 U.S. at 678. The Court “construe[s] pro se filings liberally when evaluating them under  
 8 *Iqbal*.” *Jackson v. Barnes*, 749 F.3d 755, 763–64 (9th Cir. 2014) (quoting *Hebbe v. Pliler*,  
 9 627 F.3d 338, 342 (9th Cir. 2010)).

## 10 **II. Statutory Screening**

11 The Court previously dismissed Plaintiff’s Original Complaint because she failed  
 12 to bring any cognizable claim under any civil cause of action. The Court dismissed the  
 13 following claims with prejudice: Plaintiff’s claim for wrongful removal under the Fourth  
 14 Amendment, Plaintiff’s claims requesting reversal of the New Hampshire state court’s  
 15 order, and Plaintiff’s claims regarding Judge Cooper’s conduct performed in his official  
 16 capacity as a judge. (Doc. 5 at 8). However, the Court allowed Plaintiff the opportunity  
 17 to amend her claims brought under the Fourteenth Amendment and Child Welfare Act,  
 18 42 U.S.C. § 670 *et seq.* (“CWA”). (*Id.*) It explained that Plaintiff “must clarify her  
 19 custody of [her child]”, “elaborate on the factual circumstances surrounding [her child’s]  
 20 removal[,]” and “specify how [the Defendants’] participation in removing [her child]  
 21 violates Plaintiff’s substantive due process right to familial association under the  
 22 Fourteenth Amendment and protected rights under the CWA.” (*Id.* at 9).

23 In her FAC, Plaintiff seeks to add her child, M.P., as a plaintiff in the matter.  
 24 (Doc. 6 at 3). Plaintiff and M.P. aim to bring suit against Child Protective Services Worker  
 25 Lisa Bell (“CPSW Bell”) of the New Hampshire Division for Children, Youth and  
 26 Families; Officer Oulette of the Bow Police Department; and the Honorable Judge Thomas  
 27 Cooper (collectively “Defendants”). Plaintiff states that on May 21, 2021, she and M.P.  
 28 were staying as hotel guests at The Hampton in Bow, New Hampshire. (*Id.* at 2). Plaintiff

1 alleges that Officer Oulette handcuffed M.P., removed her from the hotel, and took her to  
 2 Concord Hospital, all under the direction of CPSW Bell. (*Id.*) Plaintiff further alleges  
 3 that Officer Oulette removed M.P. “WITHOUT evidence of imminent harm OR exigent  
 4 circumstances” and that CPSW Bell “presented NO warrant of Order for removal yet she  
 5 advised [Plaintiff] to consult an attorney regarding NH 169-C.” (*Id.* at 2–3).<sup>3</sup> Plaintiff  
 6 represents that she had full custody over M.P. at the time of M.P.’s removal. (*Id.* at 1).

7 The FAC appears to state the following claims: (1) M.P.’s Fourth Amendment claim  
 8 for unlawful search and seizure of her person; (2) Plaintiff’s Fourth Amendment claim for  
 9 unlawful search and seizure of M.P.; and (3) Plaintiff’s Fourteenth Amendment claim for  
 10 interference with familial relations.<sup>4</sup> (*Id.* at 4). The Court will again construe these claims  
 11 as brought under 42 U.S.C. § 1983, which creates a private right of action for a plaintiff to  
 12 assert a violation of their federal constitutional rights. *See Eldridge v. Block*, 832 F.2d  
 13 1132, 1137 (9th Cir. 1987) (“The Supreme Court has instructed federal courts to liberally  
 14 construe the ‘inartful pleading’ of pro se litigants.”) (citation omitted).

15 To state a Section 1983 claim, a plaintiff must allege (1) the violation of a  
 16 constitutional right that was (2) committed by a person acting under color of state law. *See*  
 17 *West v. Atkins*, 487 U.S. 42, 48 (1988). The Court will address each constitutional claim  
 18 in turn before turning to Plaintiff’s claims against Judge Cooper.

#### 19 **A. M.P.’s Fourth Amendment Claim**

20 Plaintiff seeks to add M.P. as a plaintiff in the FAC and “wishes to have M.P.’s  
 21 Fourth Amendment rights considered and protected.” (Doc. 6 at 3–4). However, Plaintiff  
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23 <sup>3</sup> Chapter 169-C, also called the Child Protection Act, is a New Hampshire statute that  
 24 “provide[s] protection to children whose life, health or welfare is endangered.” (N.H. Rev.  
 Stat. Ann. § 169-C:2 (2023)).

25 <sup>4</sup> Plaintiff does not seek to reallege her CWA claim in the FAC. Any cause of action that  
 26 was raised in the original Complaint and that was voluntarily dismissed or was dismissed  
 27 without prejudice is waived if it is not alleged in a first amended complaint. *Lacey v.*  
 28 *Maricopa Cnty.*, 693 F.3d 896, 928 (9th Cir. 2012) (*en banc*). Thus, Plaintiff’s CWA claim  
 is waived.

cannot add M.P. as a plaintiff or assert claims on M.P.'s behalf. "[T]he general rule is that only the person whose Fourth Amendment rights were violated can sue to vindicate those rights." *Moreland v. Las Vegas Metro. Police Dep't.*, 159 F.3d 365, 369 (9th Cir. 1998), *as amended* (Nov. 24, 1998). Thus, M.P. may state a Fourth Amendment claim based on FAC allegations that Officer Oulette removed her without evidence of imminent danger or harm. However, a parent cannot bring a *pro se* action "on behalf of a minor child without retaining a lawyer." *Johns v. Cnty. of San Diego*, 114 F.3d 874, 877 (9th Cir. 1997); *Williams v. Ariz. Super. Ct. of Pima Cnty.*, 2022 WL 2442593, at \*4 (D. Ariz. Apr. 11, 2022) (dismissing a plaintiff's request to name her children as plaintiffs in the suit); *Holmes v. City of Flagstaff*, 2010 WL 2889934, at \*8–9 (D. Ariz. July 21, 2010).

Therefore, M.P.'s Fourth Amendment claim is dismissed without prejudice. If M.P. wishes to proceed with her own Fourth Amendment claim, she must retain a lawyer.

**B. Plaintiff's Fourth Amendment Claim** for the Unlawful Search and Seizure of M.P.

The Court previously dismissed with prejudice Plaintiff's Fourth Amendment claim relating to the alleged unlawful seizure of M.P. because Plaintiff lacked standing to bring this claim. (Doc. 6 at 4–5 citing *Moreland*, 159 F.3d at 369 and *Osborne v. Cnty. of Riverside*, 385 F. Supp. 2d 1048, 1052 (C.D. Cal. 2005) ("While a person has standing to challenge the seizure of his or her own person, a person does not have standing to vicariously assert the Fourth Amendment rights of another person.")). The Court will not revisit its ruling. This claim remains dismissed.

**C. Plaintiff's Fourteenth Amendment Claim**

This Court previously dismissed Plaintiff's Fourteenth Amendment claim for interference with familial relations without prejudice due to three defects: (1) it was unclear whether Plaintiff was M.P.'s custodial parent at the time M.P. was removed; (2) Plaintiff failed to provide sufficient facts regarding the circumstances in which Officer Oulette removed M.P.; and (3) Plaintiff did not state with particularity the involvement CPSW Bell had in M.P.'s removal. For the following reasons, the Court finds Plaintiff has cured all of

1 these deficiencies.

2 First, it was unclear from the Original Complaint whether Plaintiff was M.P.’s  
3 custodial parent. A plaintiff cannot bring a Fourteenth Amendment claim alleging  
4 wrongful removal without first establishing custodial rights. *Troxel v. Granville*, 530 U.S.  
5 57, 67 (2000) (explaining that “the custodial parent has a constitutional right” to parental  
6 rights); *see generally Wallis v. Spencer*, 202 F.3d 1126, 1136 (9th Cir. 2000). The FAC  
7 now alleges that Plaintiff had “full, sole legal and physical custody” when M.P. was  
8 removed on May 21, 2021. (Doc. 6 at 1). Thus, the FAC cured this defect.

9 Second, the Original Complaint failed to provide sufficient facts regarding the  
10 circumstances in which Officer Oulette removed M.P. Specifically, Plaintiff failed to  
11 allege that Officer Oulette did not remove M.P. due to imminent danger of serious bodily  
12 injury. (Doc. 5 at 6). Indeed, government officials can seize a child without a warrant if  
13 they possess information giving reasonable cause to believe that the child is in imminent  
14 danger of serious bodily injury. *Kirkpatrick v. Cnty. of Washoe*, 843 F.3d 784, 790 (9th  
15 Cir. 2016) (citing *Wallis*, 202 F.3d at 1138); *see also Ram v. Rubin*, 118 F.3d 1306, 1311  
16 (9th Cir. 1997). Plaintiff’s FAC now alleges that Officer Oulette removed M.P.  
17 “WITHOUT evidence of imminent harm OR exigent circumstances.” (Doc. 6 at 2).  
18 Accepting these factual statements as true, as the Court must, Plaintiff has sufficiently  
19 stated a substantive due process claim under the Fourteenth Amendment against Officer  
20 Oulette. *See Shwarz v. United States*, 234 F.3d at 435.

21 Third, the Original Complaint did not state with particularity the involvement  
22 CPSW Bell, as Officer Oulette’s supervisor, had in M.P.’s removal. (Doc. 5 at 5–7). This  
23 is because supervisory personnel “are generally not liable under § 1983 for the actions of  
24 their employees under a theory of *respondeat superior*. . . [T]herefore, when a named  
25 defendant holds a supervisory position, the causal link . . . must be specifically alleged.”  
26 *Leubner v. Cnty. of San Joaquin*, 2009 WL 1212248, at \*3 (E.D. Cal. May 5, 2009) (citing  
27 *Fayle v. Stapley*, 607 F.2d 858, 862 (9th Cir. 1979)). Plaintiff’s FAC now alleges that  
28 Officer Oulette removed M.P. “under direction of” [CPSW Bell] and that CPSW Bell was

1 present at the time of removal. (Doc. 6 at 2, 4). Plaintiff further states that CPSW Bell  
 2 “presented NO warrant of Order for removal yet she advised [Plaintiff] to consult an  
 3 attorney regarding NH 169-C.” (*Id.* at 2–3). Accepting these factual statements as true, as  
 4 the Court must, Plaintiff has sufficiently stated a substantive due process claim under the  
 5 Fourteenth Amendment against CPSW Bell. *See Shwarz v. United States*, 234 F.3d at 435.  
 6 She may thus proceed with her Fourteenth Amendment Due Process claim for interference  
 7 with her right to familial association.

#### 8 **D. Claims Against Judge Thomas Cooper**

9 Last, Plaintiff again seeks to join Judge Cooper as a defendant in the case. The  
 10 Court previously barred Plaintiff from bringing certain claims against Judge Cooper  
 11 because judges are protected by judicial immunity for acts performed in their official  
 12 capacities. (Doc. 5 at 8). *Ashelman v. Pope*, 793 F.2d 1072, 1075 (9th Cir. 1986) (*en*  
 13 *banc*); *Acevedo v. Pima Cnty. Adult Probation Dep’t*, 690 P.2d 38, 40 (Ariz. 1984). The  
 14 Original Complaint did not specify what conduct Plaintiff sought to hold Judge Cooper  
 15 liable for. Plaintiff’s FAC now alleges that Judge Cooper failed to “uphold the Constitution  
 16 and state laws” (Doc. 6 at 3) and “did NOT require any evidence for his damaging rulings.”  
 17 (*Id.*) Such acts, however, were performed through Judge Cooper’s official capacity as a  
 18 judge and he is entitled to judicial immunity. *Ashelman*, 793 F.2d at 1075. Therefore,  
 19 Plaintiff’s claims against Judge Cooper are denied with prejudice.

20 In sum, the Court will again dismiss, with prejudice, Plaintiff’s Fourth Amendment  
 21 claim for the unlawful seizure of M.P. for lack of standing and Plaintiff’s claim against  
 22 Judge Cooper, who is immune from suit. However, Plaintiff has adequately stated a claim  
 23 against Defendants Officer Oulette and CPSW Bell for interference with familial relations  
 24 under the Fourteenth Amendment. When liberally construing this *pro se* FAC, as the Court  
 25 must, the Court finds that Plaintiff’s FAC contains “sufficient factual matter, accepted as  
 26 true” to state claims for relief that are “plausible on [their] face.” *Iqbal*, 556 U.S. at 678.  
 27 Plaintiff’s FAC is therefore sufficient to survive the “low threshold” set for screening under  
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1 to 28 U.S.C. § 1915(e)(2).<sup>5</sup> *Wilhelm v. Rotman*, 680 F.3d 1113, 1123 (9th Cir. 2012). The  
 2 Court will allow Plaintiff to serve the FAC on Defendants Officer Oulette and CPSW Bell  
 3 and proceed with a Fourteenth Amendment claim for violation of her right to familial  
 4 association. All other claims and Defendants shall be dismissed.

5 Accordingly,

6 **IT IS ORDERED dismissing, without prejudice**, M.P.'s Fourth Amendment  
 7 claim for unlawful search and seizure of her person. If M.P. wishes to proceed with her  
 8 own Fourth Amendment claim, an attorney must file a Notice of Appearance on her behalf  
 9 within thirty (30) days of this Order. If an Order of Appearance is not filed by **July 31,**  
 10 **2023**, the Clerk of Court shall terminate M.P. as a Plaintiff in this matter without further  
 11 Court Order. For the reasons stated in the Court's prior Order, Plaintiff's Fourth  
 12 Amendment claim for unlawful search and seizure of M.P. remain dismissed, with  
 13 prejudice.

14 **IT IS FURTHER ORDERED** that Plaintiff's claims against the Honorable Judge  
 15 Thomas Cooper are **DISMISSED with prejudice**. **The Clerk of Court shall kindly**  
 16 **dismiss** Defendant Thomas Cooper from this action. No cognizable claims having been  
 17 alleged against Defendants New Hampshire Department of Children Youth and Families,  
 18 Bow Police Department, Unknown Lunau, or 6th Circuit Court of New Hampshire, the  
 19 Clerk of Court shall also dismiss them from this matter.

20 **IT IS FURTHER ORDERED** that Plaintiff shall be responsible for service of: (1)  
 21 the Summons, (2) the redacted First Amended Complaint, and (3) this Order on Defendants  
 22 New Hampshire Bow Police Officer Oulette and New Hampshire Child Protective Services  
 23 Worker Bell.

24 **IT IS FURTHER ORDERED** that because the Court has sealed Plaintiff's First  
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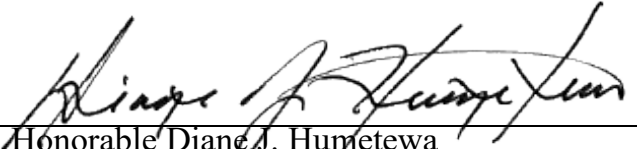
26 <sup>5</sup> Plaintiff is cautioned that "the *sua sponte* screening and dismissal procedure is  
 27 cumulative of, and not a substitute for, any subsequent Rule 12(b)(6) motion that [a  
 28 defendant] may choose to bring." *Teahan v. Wilhelm*, 481 F. Supp. 2d 1115, 1119 (S.D.  
 Cal. 2007); *see also Amor v. Arizona*, 2009 WL 529326, at \*25 n.18 (D. Ariz. Feb. 27,  
 2009).



1 Amended Complaint (Doc. 6) due to her reference of her child's full name and date of  
2 birth, Plaintiff is directed to file a redacted version of her First Amended Complaint **within**  
3 **fourteen (14) days** of this Order.

4 **IT IS FINALLY ORDERED** that Plaintiff must become familiar, and comply,  
5 with the Federal Rules of Civil Procedure ("Rules") and the Local Rules of Practice for the  
6 District Court for the District of Arizona ("Local Rules"). Plaintiff is encouraged to consult  
7 the resources for self-represented litigants available on the Court's website at  
8 <http://www.azd.uscourts.gov/proceeding-without-attorney>. Of note, the Court provides a  
9 Handbook for Self-Represented Litigants ([http://www.azd.uscourts.gov/handbook-](http://www.azd.uscourts.gov/handbook-selfrepresented-litigants)  
10 [selfrepresented-litigants](http://www.azd.uscourts.gov/handbook-selfrepresented-litigants)), as well as forms for scheduling an appointment with a volunteer  
11 lawyer at the Free Self-Service Clinic at the Phoenix courthouse  
12 (<http://www.azd.uscourts.gov/federalcourt-self-service-clinic-phoenix>).

13 Dated this 21st day of July, 2023.

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17 Honorable Diane J. Humetewa  
18 United States District Judge  
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